SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	Februar	y 14, 2016		
Time of Incident:	8:55 pm	8:55 pm		
Location of Incident:				
Date of COPA Notificat	ion: Februar	y 15, 2016		
Time of COPA Notifica	tion: 2:18 am	2:18 am		
On February 14, his tab at search 's Steam of Officer Department's Distraction being processed by the control of the control o	walkhouse. was walkhouse. was walkhouse was walkhouse. was walkhouse was walkhouse.	was transported was processed. He alleges	("Sgt. ") to the Chicago Police	
II. INVOLVED PA	ARTIES			
Involved Officer #1:	Appointment: DOB: 1967	Star # Employe 1992, Sergeant of Police, Male, White		
Involved Officer #2:	* * *	, Star # Employee, Employee, Police Officer, Ur, Male, White		
Involved Individual #1:	DO	B: 2016, Male, White		
III. ALLEGATION	NS			
Officer	Allegation		Finding	
	during the a	that on February 14, 2016, arrest of at aurant,	Not Sustained	

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

to Mr. as a "fuckin' asshole" in violation of Rule 2, Rule 8, and Rule 9 of the Chicago Police Department Rules of Conduct.	
2. It is alleged that on February 14, 2016, while in the processing area of the District Station, Sgt. struck/punched Mr. on the face with an elbow in violation of Rule 1, Rule 2, Rule 8, and Rule 9 of the Chicago Police Department Rules of Conduct.	Not Sustained
1. It is alleged that on February 14, 2016, during the arrest of at Restaurant, Officer referred to Mr. as a "fuckin' asshole" in violation of Rule 2, Rule 8, and Rule 9 of the Chicago Police Department Rules of Conduct.	Not Sustained
2. It is alleged that on February 14, 2016, while in the processing area of the 01th District Station, , Officer observed misconduct and failed to report it to a supervisor in violation of Rule 2, Rule 5, and Rule 10 of the Chicago Police Department Rules of Conduct.	Unfounded
3. It is alleged that on February 14, 2016, while in the processing area of the District Station, Officer stated to Mr. "Why don't you go fucking hang yourself" in violation of Rule 2, Rule 8, and Rule 9.	Not Sustained

IV. APPLICABLE RULES AND LAWS

Rules

- 1. Rule 1 Violation of any law or ordinance.
- 2. Rule 2 Any action or conduct which impedes the Department's efforts to achieve its

policy and goals or brings discredit upon the Department.

- 3. Rule 8 Disrespect to or maltreatment of any person, while on or off duty.
- 4. Rule 9 Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- 5. **Rule 10** Inattention to duty.

General Orders

- 1. GO 01-01 Mission Statement and Core Values
- 2. GO 03-02 Use of Force
- 3. GO 06-01 Processing Persons under Department Control

V. INVESTIGATION²

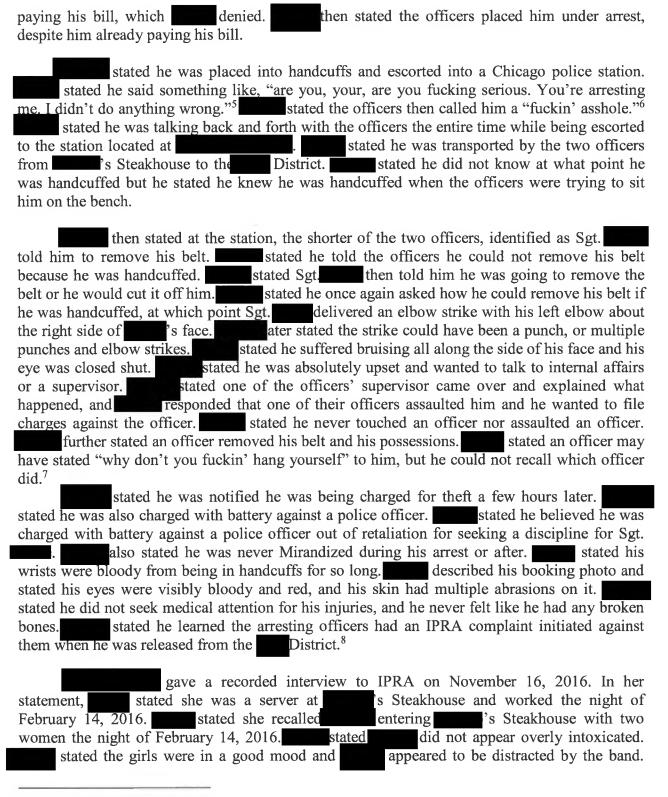
a. Interviews

) gave a recorded interview to IPRA on June 29, 2016. In his stated he was shopping with his girlfriend on February 14, 2016, and they went to have dinner at 's Steakhouse at stated that at stated he spoke with a some point he received his tab and he was unhappy with the price. server and asked to speak to a manager about his bill. then stated he spoke to the manager and reluctantly gave the manager his credit card to pay his tab. stated he was angry. stated he was not threatening the manager nor acting in a violent manner. stated he was not okay with the price of what he was being charged, and the next thing he knew, two stated he was absolutely intoxicated, police officers showed up to s Steakhouse. but in a happy mood prior to the police arriving. stated the officers asked him to step said it was "absolutely ridiculous." then stated the officers told him he stated he tried to show the had to pay his bill, to which responded he already had. officers that he paid his bill on his phone because he received an automatic notification on his phone that he paid his bill. stated the officers refused to look at his phone, and the officers that the situation was "absolute BS." then stated the officers told him he needed to get in the back of their car and he and the officers got into a verbal argument over him stated he was never confrontational with the officers, and he respected their authority. stated he told officers he was going to dispute the bill because he did not

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ Attachment 28, pg. 4, line 9.

⁴ Attachment 28, pg. 4, line 16.

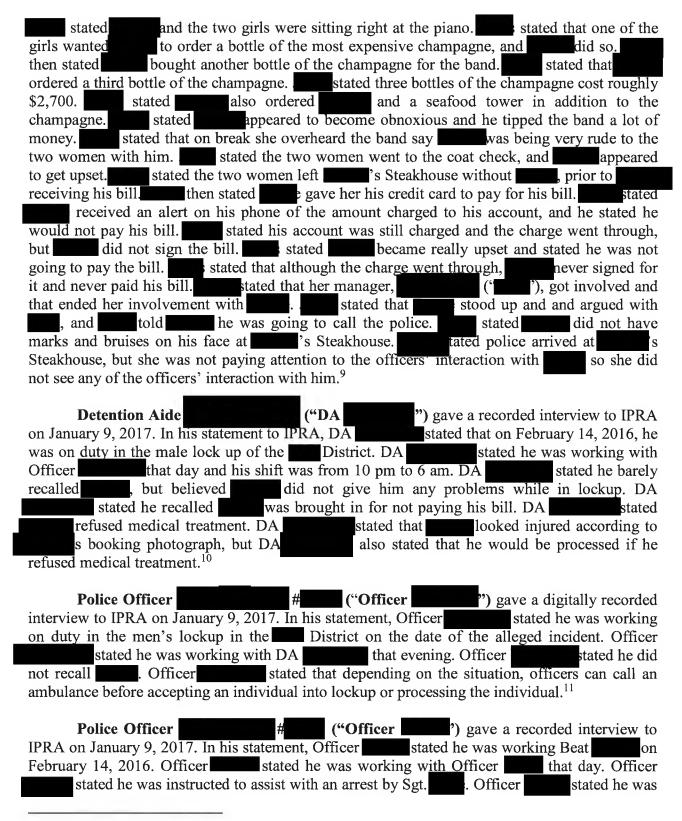


⁵ Attachment 28, pg. 21 line 30-32.

⁶ Attachment 28, pg. 22 line 1-3.

⁷ Attachment 28, pg. 46 line 9-15.

⁸ Attachment 28.



⁹ Attachment 38.

¹⁰ Attachment 48.

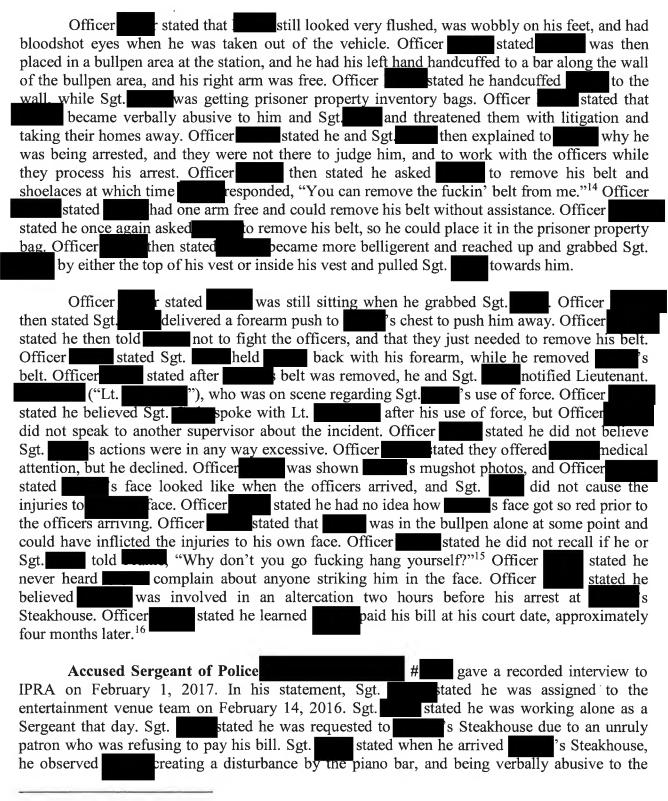
¹¹ Attachment 49.

given the instruction after roll call at the District. Officer stated his partner, Officer
was already at the District, as he was running late. Officer stated he entered the
processing room and he was told by Officer that the heeded to be processed for failing
to pay his bill. Officer stated he was told to complete the arrest report by Officer
and he authored s Arrest Report. Officer stated he did not have any physical
contact with
. Officer stated did not appear as red as he did in the booking photo when he
was taken into lockup. Officer stated stated never mentioned being punched in the face or
hit in the face by any officers. Officer stated stated arm handcuffed to a pole in
the processing room. Officer stated he was told by Sgt. to add a charge of battery to
's Arrest Report. Officer stated that Sgt. told him that had grabbed Sgt.
by the vest and pulled him towards him. Officer stated he did not see
Sgt. as he was writing the Arrest Report at a computer, nor did he ever see an officer enter
s cell. Officer stated he never heard a commotion coming from s cell.
Officer stated he spoke with a stated he spok
Mirandized . Officer stated he asked why he didn't just pay the bill. Officer
stated that became irate and was screaming and cursing at him. Officer
stated appeared to be intoxicated and slurred his speech. Officer stated
never said anything about Sgt. attacking him. Officer stated he never heard Sgt.
or Officer say, "Why don't you fucking hang yourself," to
A J. D. P Officer ("Officer 2") gove a recorded
Accused Police Officer # ("Officer") gave a recorded
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minutes to reach the District, and was quiet in the car.

¹² Attachment 50.

¹³ Attachment 47, Pg. 11, line 10-13.



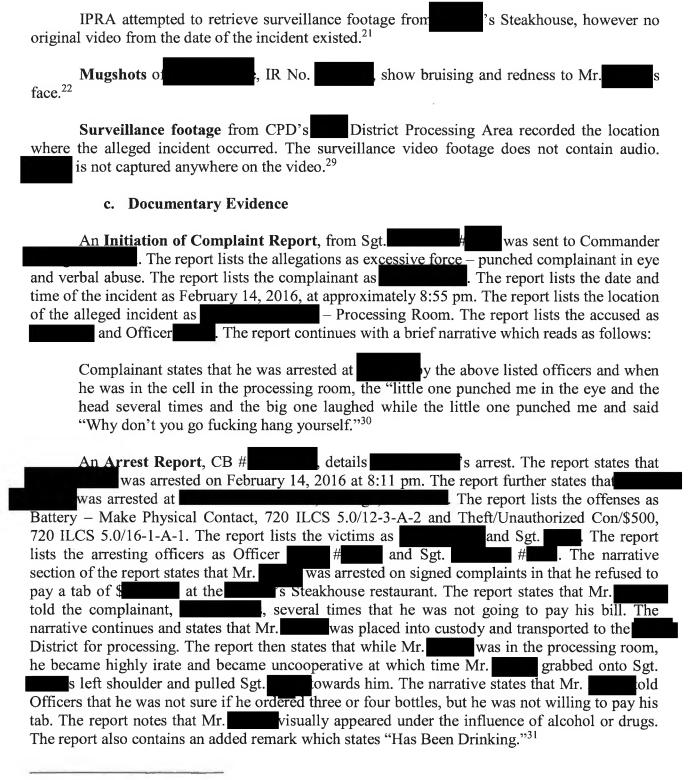
¹⁴ Attachment 47, pg. 15, line 22-23.

¹⁵ Attachment 47, pg. 26, line 7-13.

¹⁶ Attachment 47.

b. Digital Evidence

¹⁷ Attachment 53, pg. 9, line 5-6.
¹⁸ Attachment 53, pg. 24, line 16.
¹⁹ Attachment 53, pg. 14, line 19-20.
²⁰ Attachment 53.



²¹ Attachment 14.

²² Attachment 8.

²⁹ Attachment 60.

³⁰ Attachment 4.

³¹ Attachment 7.

Property Inventory Logs # # # # # # # # # # # # # # # # # # #
An Original Case Incident Report, RD # documents sarrest. The report notes the violation as 0454 – Battery – Agg Po Hands No/Min Injury and 0810 – Theft – Over \$500, with the occurrence location listed as the occurrence date and time listed as 14 February 2016 at 8:11 pm. The report lists the suspect as sarrest. The report narrative states that officers responded to a disturbance at the sarrative sarrest. The narrative continues and states that the victim, wanted to sign complaint on for failing to pay his tab of the victim. The narrative then states that was placed into custody and taken to the District for processing. The narrative continues and states that while in processing, refused to take off his belt and with his free right hand he grabbed Sgt. It is left shoulder pulling Sgt. It towards him. The narrative then states that Sgt. It is left shoulder harrative states that a Tactical Response Report was completed by Sgt. If or his use of force against. The report lists officers involved as Officer Sgt. In and Officer and Officer sarries sarrest.
A Tactical Response Report ("TRR") completed by Sgt. documents his use of force against The TRR lists the date of the incident as February 14 th , 2016 and the time as 8:55 pm. The TRR lists the address of the occurrence as The TRR lists the subject as The TRR lists 's actions as "Did Not Follow Verbal Direction," "Stiffened (Dead Weight)," and "Grabbed Officer's Arm." Sgt actions are listed as "Member Presence," "Verbal Commands," and "Forearm to Chest." The TRR also contains a statement from regarding the use of force which states, "The offender stated, not verbatim, that he was unhappy over the arrest by the police after the restaurant had him arrested." Lt marked that Sgt actions were in compliance with the Department's procedures and directives, but Log #1079242 was generated because of scomplaints. ³⁴

<sup>Attachment 10.
Attachment 6.
Attachment 9.</sup>

d. Additional Evidence

IPRA attempted to speak with the manager of steakhouse at the time of t	he
incident and the complaining witness and victim on a sarrest report, a a sarrest report, a sarrest rep	<u>n</u> d
obtain his notes from the date of the alleged incident. IPRA was informed by the	S
Steakhouse manager that as of October 19, 2016, was no longer employ	ed
at Steakhouse, and no paperwork was able to be found regarding the incident involvi-	ng
33	

VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

- 1. <u>Sustained</u> where it is determined the allegation is supported by a preponderance of the evidence;
- 2. <u>Not Sustained</u> where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
- 3. <u>Unfounded</u> where it is determined by clear and convincing evidence that an allegation is false or not factual; or
- 4. <u>Exonerated</u> where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A preponderance of evidence can be described as evidence indicating that it is more likely than not that the conduct occurred and violated Department policy. See Avery v. State Farm Mutual Automobile Insurance Co., 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. See *e.g.*, *People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

VII. ANALYSIS

³⁵ Attachment 33 and Attachment 34.

According to General Order ("GO") 03-02-01, the Chicago Police Department utilizes a Use of Force Model to provide guidance on the appropriate amount of force to be used to affect a lawful purpose. The model may progress from member presence to the application of deadly force. The primary objective of the use of force is to ensure control of a subject with the reasonable force necessary based on the totality of the circumstances. Department members must escalate or de-escalate the amount of force which is reasonably necessary to overcome the subject's resistance and to gain control over the subject.

GO 03-02-01 and GO 03-02-02 identify three categories of an assailant: A subject whose actions are aggressively offensive without weapons, a subject whose actions will likely cause physical injury with or without a deadly weapon, and a subject whose actions will likely cause death or serious physical injuries. GO 03-02-02 defines an assailant as "a subject who is using or threatening the imminent use of force against himself/herself or another person."

According to GO 03-02-01, direct mechanical techniques are forceful, concentrated striking movements such as punching and kicking, or focused pressure strikes and pressures. Direct mechanical techniques may be used only against assailants.

In addition to CPD's General Orders, the authorization to use of force is codified under 720 ILCS 5/7-5 (1986). The pertinent part of the statue states that:

"[a] peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person..."

³⁶ General Order G03-02 'Use of Force Guidelines' effective 01 October 2002 governs Sgt. sconduct in this matter as it was effective on February 14, 2016. A new Use of Force model was enacted over the course of this investigation and is effective as of 16 October 2017. For the purposes of this investigation, G03-02 effective 01 October 2002 will be used.

Finally, determinations regarding the potential use of excessive force - deadly or not - in the course of an arrest, investigatory stop, or other "seizure" are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); *see Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). Moreover, the reasonableness calculation "must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham, at* 396–97.

The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. Graham v. Connor, 490 U.S. 386, 397 (1989); see Estate of Phillips v. City of Milwaukee, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." Graham, 490 U.S. at 396 (citing Tennessee v. Garner, 471 U.S. 1, 8-9 (1985). The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation." Plumhoff v. Rickard, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). The analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. Plumhoff, 134 S. Ct. at 2020; see also Scott v. Edinburg, 346 F.3d 752, 756 (7th Cir. 2003)

stated he was struck about the face by Sgt. While both Officer denied that allegation. Both Officer and Sgt. stated that Sgt Sgt. 's upper chest and held him against the cell wall with his forearm. The officers stated Sgt. grabbed Sgt. and pulled him close.³⁷ The officers' used force only after statements were further corroborated by Sgt. TRR, which states Sgt. forearm against are 's chest. Officer also stated that appeared very flush and had bloodshot eyes and reddish skin. provided IPRA with photos of his alleged injuries, however, it is not clear how sustained those injuries, or if it was a result of Officer s actions. COPA finds there is a lack of corroborative material evidence to sustain s allegation, and as such finds Allegation #2 for Sgt. is Not Sustained.

As misconduct may have occurred and Officer did did not report any incident of misconduct, IPRA brought an allegation for failing to report the possible misconduct that

³⁷ Per GO-03-02-01, would be defined by as an assailant, as his action, in grabbing Sgt. was aggressively offensive, or likely to cause injury to Sgt. Assuming arguendo, as was an assailant in that moment, if Sgt. used force such as punches or elbow strikes, it would have been within policy as codified by GO-03-02-01.

VIII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Allegation	Finding
1. It is alleged that on February 14, 2016, during the arrest of at Restaurant, Restaurant, Sgt. referred to Mr. as a "fuckin' asshole."	Not Sustained
2. It is alleged that on February 14, 2016, while in the processing area of the District Station, Sgt. Struck/punched Mr. on the face with an elbow.	Not Sustained
Allegation	Finding
1. It is alleged that on February 14, 2016, during the arrest of at Restaurant, Officer referred to Mr. as a "fuckin' asshole."	Not Sustained
2. It is alleged that on February 14, 2016, while in the processing area of the District Station, Officer observed misconduct and failed to report it to a supervisor.	Unfounded
3. It is alleged that on February 14, 2016, while in the processing area of the District Station, Officer stated to Mr. "Why don't you go	Not Sustained

fucking hang yourself."		
Approved:		
	3-26-19	
Deputy Chief Administrator	Date	

Appendix A

Assigned Investigative Staff

Squad #:

Investigator:

Supervising Investigator:

Deputy Chief Administrator: